



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlords applied for a monetary order for unpaid rent or utilities and to recover the cost of the filing fee.

The landlords, counsel for the landlord GD (counsel) and the tenant attended the teleconference hearing. The parties were affirmed and an opportunity to ask questions was provided. During the hearing the parties were given the opportunity to present their documentary evidence and to provide testimony. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

As neither party raised any concerns regarding the service of evidence and given that both parties confirmed having been served with evidence and that they had the opportunity to review that evidence, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. The monetary order will be emailed to the landlord and counsel, which must be served on the tenant prior to enforcement.

Counsel submitted that in addition to the rent owed for May 2020, the tenant has subsequently not paid the full rent for June 2020 and that only a \$500.00 rent subsidy was received from BC Housing for June 2020 leaving \$1,000.00 owing for June 2020 rent. As a result, I amend the application to include \$1,000.00 in unpaid rent for June

2020 as the parties agreed that the tenant continues to occupy the rental unit. I find this amendment does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$1,050.00 which includes the filing fee to \$2,050.

Issues to be Decided

- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- Is the application to withhold the security deposit premature?
- Are the landlords entitled to recover the cost of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on April 1, 2020. The parties agreed that the \$1,500.00 monthly rent is due on the first day of each month even though the landlords neglected to complete the day in which it is due on the tenancy agreement.

The tenant paid a \$750.00 security deposit at the start of the tenancy, which the landlords continue to hold. I find the landlords' application to retain the tenant's security deposit is premature as the tenant continues to occupy the rental unit and there is no request before me for an order of possession.

Counsel submits that the tenant owes a total of \$1,950.00 in unpaid rent comprised of \$950.00 owing from May 2020 and \$1,000.00 owing for June 2020. The tenant did not dispute the amount of rent owing.

Analysis

Based on the testimony and submissions of counsel provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the

regulations or the tenancy agreement, **unless the tenant has a right under this Act to deduct all or a portion of the rent.**

[Emphasis added]

As the tenant admitted to not paying the rent as claimed and did not present any evidence that they had a right under the Act to deduct all or a portion of rent under the Act, I find the tenant owes \$950.00 for May 2020 rent, and \$1,000.00 for June 2020 rent for a total in unpaid rent of \$1,950.00 as claimed by the landlords.

Based on the above, I find the landlords have met the burden of proof and is entitled to their full monetary claim of **\$1,950.00** as claimed.

As the landlords' application was fully successful, I grant the landlord the recovery of the filing fee of **\$100.00** pursuant to section 72 of the Act.

As noted above, as the tenancy continues the landlords' request to retain the security deposit is premature. Given the above, I grant the landlords a monetary order under section 67 for the amount owing by the tenant to the landlords in the amount of **\$2,050.00**.

Conclusion

The landlords' application is successful, with the exception of the security deposit request to retain, which is premature.

The landlords have established a total monetary claim in the amount of \$2,050.00. The landlords have been granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlords in the amount of \$2,050.00. If the landlord requires enforcement of the monetary order, the monetary order must first be served on the tenant and may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that court.

This decision will be emailed to the parties as noted above.

The monetary order will be emailed to the landlords and counsel only for service on the tenant as necessary.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 23, 2020

Residential Tenancy Branch